**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE KURIAN JOSEPH**

**THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929**

**WP(C).No. 16198 of 2004(C)**
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**PETITIONER:**
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**B.MOHANA CHANDRAN NAIR,**
**PROPRIETOR, M/S. PRASANTHI CASHEW COMPANY,**
**MANGAD, KOLLAM, RESIDING AT HARISREE,**
**UDHAYAMARTHANDAPURAM CHERRY, KOCHUPLAMOOD,**
**KOLLAM.**

**BY ADV. SRI.T.M.CHANDRAN**
**SRI.S.SUJITH**
**SRI.R.ARUN**

**RESPONDENTS:**
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**1. THE INDUSTRIAL TRIBUNAL, KOLLAM.**

**2. THE PRESIDENT, KERALA STATE KASUVANDI VYAVASAYA MAZDOOR SANGH (BMS), THAMARAKULAM, KOLLAM.**

**3. THE REGIONAL PROVIDENT FUND COMMISSIONER EMPLOYEES PROVIDENT FUNDS ORGANISATION, BHAVISHYANIDHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.**

**BY ADV. SRI.N.N. SUGUNAPALAN, SC, P.F.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WP(C) NO: 16198/2004 C**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1. COPY OF THE CLAIM STATEMENT FILED BY THE R2.**

**EXT.P2. COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER.**

**EXT.P3. COPY OF THE WITNESS SCHEDULE SUBMITTED BY THE PETITIONER**

**EXT.P4. COPY OF THE AWARD DT. 4/2/04 IN ID 103/2000 PASSED BY THE R1.**

*True copy*

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**KURIAN JOSEPH, J.**

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**W.P(C)No. 16198 of 2004**

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**Dated this the 14th day of June, 2007**

**JUDGMENT**

Ext.P4 award of the Industrial Tribunal, Kollam in I.D.No.103/2000 is under challenge. The issue referred for adjudication is whether the denial of employment to Smt.Saraswathy with effect from 8-3-2000 is justifiable. The Tribunal, placing reliance mainly on the ESI records, held that the petitioner was entitled to continue till December 2000 and hence she was eligible to get the backwages. According to the management no sufficient opportunity was granted to adduce evidence regarding the stand taken for retiring the petitioner on 8-3-2000. It is seen that going by the records furnished by the petitioner before the management as well as the records before the Provident Fund Commissioner, the date of retirement is 8-3-2000. There is no dispute by the Union or the worker that as per the records of the worker she was to retire on 8-3-2000 on attaining the age of retirement, ie. 58 years. Therefore, the management cannot be faulted in having retired the worker at

the age of 58 going by the records maintained by the management. The Union or the worker should have, in case of any dispute regarding the date of birth, taken steps to get the date of birth corrected in the service records of the company, without which the worker could not have aspired for continuance upto December 2000 on the basis of records maintained by some other authority. This crucial aspect has missed the notice and consideration of the Tribunal, and that goes to and cuts the root and shakes the basis of the dispute. The award is accordingly quashed.

The writ petition is disposed of as above.

(KURIAN JOSEPH, JUDGE)

ahg.